(3)

No. 05-791

In The
Supreme Court of the United States

JEFFREY R. GOLIN, ELSIE Y. GOLIN, NANCY K. GOLIN
Petitioners

v.

CLIFFORD B. ALLENBY, DIRECTOR DEPARTMENT OF DEVELOPMENTAL SERVICES, STATE OF CALIFORNIA, IN HIS OFFICIAL AND INDIVIDUAL CAPACITY; H. DEAN STILES (OFFICE OF LEGAL AFFAIRS OF CALIFORNIA DEPARTMENT OF DEVELOPMENTAL SERVICES) IN HIS INDIVIDUAL AND PERSONAL CAPACITY, COUNTY OF SANTA CLARA; JAMIE BUCKMASTER (SANTA CLARA COUNTY ADULT PROTECTIVE SERVICES; JOSE VILLAREAL, MALORIE M. STREET (SANTA CLARA COUNTY OFFICE OF PUBLIC DEFENDER) EACH IN THEIR OFFICIAL, INDIVIDUAL AND PERSONAL CAPACITIES; SAN ANDREAS REGIONAL CENTER, INC. ("SARC"); SANTI J. ROGERS, MIMI KINDERLEHRER, TUCKER LISKE (SAN ANDREAS REGIONAL CENTER), EACH IN THEIR INDIVIDUAL AND PERSONAL CAPACITIES; NANCY J. JOHNSON (BERLINER COHEN); CITY OF PALO ALTO; LORI KRATZER (PALO ALTO POLICE DEPARTMENT) IN HER OFFICIAL AND INDIVIDUAL CAPACITY; EMBEE MANOR, EDNA MANTILLA, IN HER INDIVIDUAL AND PERSONAL CAPACITY; AND DOES 1-50, DEFENDANTS-APPELLEES
Respondents

On Petition for a Writ of Certiorari
To The United States Circuit Court of Appeals
for the Ninth Circuit

PETITIONERS' SECOND SUPPLEMENTAL BRIEF

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PETITIONERS' SECOND SUPPLEMENTAL BRIEF

The Petitioners, Jeffrey R. Golin, Elsie Y. Golin, and their daughter Nancy K. Golin respectfully submit this supplemental brief, caused by the Court's hearing of oral argument on February 28th, 2006 *in Marshall v. Marshall*, Supreme Court No. 04-1544, subsequent to the February 22, 2006 filing date for responses to the petitioner's initial December 14, 2005 petitioning brief ("Pet."). Because the arguments of the petitioner in *Marshall*[1] are strikingly similar to many of the core questions within the Golin's petitioning brief, the Golins suggest that the Court's decision regarding their petition for writ of certiorari would rely on many of the same conclusions which may be reached only after the Court has considered the oral arguments and briefs presented in *Marshall*.[2]

This Court's pending decision in *Marshall* is likely to resolve jurisdictional issues related to the Ninth Circuit's denial of jurisdiction to the petitioning Golins, as well as the petitioner in *Marshall*. Both cases involve federal courts' exercise of congressionally mandated federal jurisdiction in suits related to state probate proceedings. The *Marshall* decision may clarify federal jurisdiction in matters related to the probate exception, the domestic relations exception, preclusion and abstention, and lines of cases involving *Ankenbrandt v. Richards*, 504 U.S. 689 (1992) (domestic relations exception) and most recently *Exxon Mobil v. Saudi Basic Industries, Inc.*, 125 S. Ct., 1517 (2005) (*Rooker-Feldman* abstention) (*see* Pet. 12). Both *Marshall* and the instant case may settle three decades (post *Monroe v. Pape*, 365 U.S. 167 (1961), and

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[1] *In re Marshall*, 392 F.3d 1118 (9th Cir., 2004).

[2] The February 28 oral arguments in *Marshall* came after the February 22 expiration of Respondents' time to file Briefs in Opposition. Here after respondents sought and were granted a 30 day extension of time to file Briefs in Opposition, two of the respondents who had declared their intention to file waived their right, eliminating petitioners' opportunity to file a reply brief that might have addressed this question. On March 6, 2006, the petitioners submitted a Motion to Defer, pending the outcome of *Marshall*. The Court suggested the Motion to Defer be submitted as this Supplemental Brief. Both the Motion and this Supplemental Brief are caused by the intervening oral arguments in *Marshall*.

Mitchum v. Foster, 407 U.S. 225 (1972)) of judge-made state's-rights experimentation with abstention and preclusion deference to merely related state court proceedings.

INTERVENING MATTERS

i. *MARSHALL V. MARSHALL*

In *Marshall v. Marshall*, the facts, legal questions and arguments are significantly similar to *Golin v. Allenby*. The question at the heart of *Marshall* is the validity of a state probate guardianship/conservatorship proceeding of billionaire Howard Marshall II, ("Howard") by his son E. Pierce Marshall ("Pierce"), which stripped Howard of all his assets before his death, in which the parties allegedly engaged in questionable misconduct resulting in damages comprehensively reviewed in a federal bankruptcy court, and overturned in the Ninth Circuit on jurisdictional grounds almost identical to those appealed here.

The original Petition for Certiorari in *Golin v. Allenby* was filed with this Court and presented four questions.

The petitioners' first question challenged the understanding of the *Younger* doctrine asserted by the District Court. The District Court claimed that federal courts were prohibited from enjoining and interfering with "*ongoing*" state proceedings. The District Court dismissed *inter alia* on *Younger* grounds (Pet. a16). The Ninth Circuit Court affirmed, failing to inform its reasoning with any reference to this Court's recent narrowing in *Exxon-Mobil, supra*, of the scope barring federal *reversals* of related state court decisions applying *Rooker-Feldman* doctrine.

This same question of scope is raised in *Marshall* within its first question presented, "[W]hat is the scope of the probate exception to federal jurisdiction" (and in the related subsequent next two questions presented).

As petitioners argued in Petition Argument III (Pet. 16, 26 *et. seq.*), since the state court proceeding was of a fundamentally different nature and jurisdiction, (*i.e.*, whether to conserve Nancy Golin and who should conserve her), from the petitioners' civil rights lawsuit for tortious damages, injuries, substantive due process violations, procedural and constitutional wrongs, there could be no actual *Younger* interference. The relief, petitioners argued (*see* Pet. 28), was not available in the state probate court to re-

solve federal issues of civil rights or tort damages under Section 1983 (42 U.S.C. §1983), and the probate court expressly refused to hear them (Pet. 8).

The District Court, citing *Guardianship of Kemp*, 43 Cal. App. 3d 758, 766 (1974), (following *Browne v. Superior Court of San Francisco County*, 43 Cal.App.3d 758 (1940)), claimed in support of it's *Younger* first prong analysis that the state probate court *indefinitely* maintained *ongoing* post-appointment jurisdiction over the conservatorship (*see* Pet. a16) that precluded any jurisdiction over federal *civil rights* in federal courts[3] in the same sense that applied to *Younger*.

The District Court opinion, ratified by the Ninth, *ab initio* declared that the "domestic relations exception" (Pet. a17) applied. This fundamentally mischaracterized the Golins' factual basis. More likely, the District Court's use of an "exception" should have referred to the "probate exception." The District Court apparently *misidentified the claimed exception*. Since the District Court heavily relied on the probate court decision, the only exception it could have reasonably intended to invoke was the probate exception – also at issue in *Marshall*.

Further compounding its error, the District Court termed this a "child custody matter" (Pet. 17, 18, a29, a33). The troublesome ambiguity is contained in the undifferentiated words, "child" and "custody." An adult child, unable to exercise independence, may become the subject of adjudication in a conservatorship or guardianship proceeding, which lie within the jurisdiction of a state probate court. And thus literally associated with "probate", rather than "domestic relations." As viewed by this Court in *Ankn-*

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[3] The District Court argued that federal jurisdiction also did not lie due to domestic relations, *Rooker Feldman* and standing issues. The District Court on oral record declared that petitioners "did not have standing... that *Rooker-Feldman* applies and that abstention applies" (AER-V10), and simplistically conflated all past and potential proceedings, state or federal, without discrimination, including criminal, probate, civil and federal civil rights, and cases arising under the Constitution, into one consideration: "was there 'a trial'" and did the petitioners win or lose (AER V15), and on that basis termed the petitioners case, "this case is frivolous. It's frivolous...It's frivolous in this court." (*See* DC transcripts, AER V-19.

brandt, the "domestic relations exception" is limited to "divorce, alimony or child custody matters. Viewed in this light, the "domestic relations" exception, claimed by the District Court, is simply inappropriate. However, because similar reasoning is employed to justify the probate exception[4], this Court's reasoning in limiting the use of the "domestic relations exception" are equally applicable to the unidentified "probate exception" apparently employed by the District Court in *Golin*, and expressly employed by the District Court in *Marshall*.[5]

Alternately, in *Golin* the District Court may have intentionally broadened the breadth and scope of the domestic relations exception in order to engulf the probate exception. Respondents had invoked the pre-*Ankenbrandt* case, *Hemon v. Office of Public Guardian*, 878 F.3d 13 (1st Cir. 1989) (probate guardianship) (County Appellee's Response Brief, p26) which previously was followed solely by the First Circuit (AOB 43, 60). Whether this indirect inclusion of probate procedures via *Hemon's* authority justifies the Ninth Circuit's reliance on the domestic relations exception is another facet of the exception question. And underscores the confusion caused by the Ninth Circuit's reliance on these exceptions in both *Golin* and *Marshall*.

Most importantly, *Marshall* and *Golin* appear to present almost perfectly analogous issues, the only difference being that in *Marshall* the federal jurisdiction arises from the Federal Bankruptcy Code (28 U.S.C. §1334) and in *Golin* it arises from the Federal Civil Rights Statute 28 U.S.C. §1343, or 28 U.S.C. §1331 (federal question jurisdiction) (Pet. 1).

In *Marshall*, the Ninth Circuit held that the Texas state probate court decision favoring the respondent precluded jurisdiction by the California Federal *bankruptcy* court decision favoring the petitioner. The federal bankruptcy court in *Marshall* found that Pierce had engaged in similar

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[4] *See Marshall*, Appellate Brief, 2005 WL 3156909 (U.S.), p26; *infra* 6

[5] On that erroneous ground the District Court denied the concurrent Petition for Habeas Corpus (DC 03-05855) on jurisdictional grounds as well (Pet. a31 *et seq*), incorrectly citing *Lehman v. Lycoming County Children's Services*, 458 U.S. 505-11 (1982) with roots in the domestic relations exception to *minor* child custody matters.

tortious interference with due process and "massive discovery abuse" in the probate court tortiously interfering with Vickie's expectation of an *inter vivos* gift promised her by Howard during their brief marriage, and that the probate court reached findings that went far beyond the scope of their jurisdiction at Pierce's urging to attempt to oust the jurisdiction of the federal courts, and that the probate court alleged that the Petitioner's claims were frivolous.

In *Golin,* the Ninth Circuit held that the California state probate court decision favoring Allenby precluded federal jurisdiction. The petitioners had argued that the probate court conservatorship decision did not preclude federal court jurisdiction over the instant *Section 1983 civil rights* lawsuit for damages, and invoked a "virtually unflagging obligation ...[for federal courts] to exercise the jurisdiction given them", *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 814 (1976), AOB 55:

> "A 'probate exception' to federal jurisdiction does not exist here. On March 14, 2004, the parents cited *Markham v. Allen*, 326 U.S. 490 (1946) (*'the probate limitation prohibits a federal court only from probating a will or administering an estate'*).[6] A search of 'probate exception' cases uncovered none that considered a disputed conservatorship of the person as falling within the exception."

(Pet. 16, Appellants' Reply (Motion to Strike) to Mantilla, March 15, 2004, at p2)

Marshall expressly raises the "probate exception", relating to the reasoning of the Ninth Circuit in *Golin.*

While in *Golin* the "probate exception" challenge was not *per se* raised in the District Court, it appears fundamental to the Court's reasoning, and it was raised in a Response Motion by appellee Mantilla in the Circuit Court, on January 19, 2004, to which Petitioners replied on March 15, 2004, citing *Markham, and Marshall v. Marshall,* [392 F.3d 1118 (2005)] *(slip copy).*

In *Golin*, the Ninth Circuit expressed no opinion on the

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[6] *See* 39 Fed. B. News & J. 579, "*Federal Probate Jurisdiction-Examining the Exception To The Rule*", Federal Bar News and Journal, November/December, 1992, Gregory C. Luke and Daniel J. Hofheimer.

"probate exception" question but did hold that the "domestic relations" exception barred review. In *Marshall* the petitioner argued that the two exceptions rely on the same justifications, and application of the "cognate doctrine," should result in the analysis of *Ankenbrandt* ("domestic relations exception") applying equally to both exceptions, *Ankenbrandt v. Richards*, 504 U.S. 689 (1992), arguing:

> "*Ankenbrandt* compels a similar holding here... whatever its legitimacy or scope, a domestic relations exception to federal jurisdiction does not encompass a tort claim between diverse parties seeking damages...if an Ankenbrandt-type analysis were applied here, it would operate so as to preclude any extension of the limits that this Court has imposed on federal jurisdiction over probate-related matters. "(Marshall Brief*, at p26).

As pointed out in petitioner's Petition for Certiorari, the Ninth merely deferred to the District Court's opinion that the parents lacked standing to represent their daughter as next friends or *guardians ad litem*.[7] The District Court reasoned that it lacked jurisdiction to review a state probate court's conservatorship appointment that denied parents/petitioners standing to represent their daughter in federal court on a civil rights and liability lawsuit for damages. *The District Court's decision totally (and improperly) deferred to the probate decision on jurisdictional grounds*, judicially noticing disputed extrinsic probate court findings at the pleading stage (Pet. 21-23). *In so doing, it essentially invoked the "probate exception", albeit without expressed reference. This absolute deference* resulted in denial of the parents' standing, by acknowledging the probate court's conservatorship's preclusive effect of standing.

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[7] The docket caption for this petition reads *"Elsie Golin, et vir"* (and husband) - using a citation style normally associated with family courts. Petitioners Nancy Golin and her father, Jeffrey Golin were both recognized as parties in the Ninth Circuit and District Courts. The current caption furthers the confusion surrounding the nature of the Golin's claims, conforming to the opinion of the Ninth Circuit that is now under review, rather than to the caption page of *that* opinion (Pet. a3), which identifies all three members of the Golin family as plaintiffs/appellants. Identification of all three members as plaintiffs/appellants would accurately represent the interests at stake, especially since this is a federal civil rights case involving the rights of a handicapped adult.

The scope and breadth of the exclusivity rule applied by the Ninth Circuit is extraordinary. A grant of exclusive standing rights of personal representative to conservators in any court proceeding seemingly precludes any federal party to seek redress in any federal court.

Thus, the denial of petitioners' representation of their daughter hinged on the Ninth's preclusive acceptance of the state conservatorship, and this blanket refusal to deem them "next friends" or to permit petitioners as parents to represent their daughter's interests is actually grounded in judicial deference of the "probate exception."

ii. THIS COURT SHOULD REAFFIRM THE LONG-ESTABLISHED RESOLUTION OF THE JURISDICTIONAL CONFLICT, POSED BY *MARSHALL* AND THE INSTANT CASE, BETWEEN CONGRESSIONALLY MANDATED FEDERAL JURISDICTION, AND STANDING PRECLUSION IMPOSED HERE BY STATE PROBATE COURTS IN GUARDIANSHIP/CONSERVATORSHIP PROCEEDINGS.

The arguments within the *Marshall* briefs[8] provide guidance (*see*, fn 9) as to the extent of Congress's power to enact federal jurisdiction (*Marshall v. Marshall*, U.S. Supreme Court Appellate Brief, 2005 WL 3156909 (U.S.), pp 44-46).

> "This approach – under which state probate laws dictate the scope of federal jurisdiction – has been repeatedly rejected by this Court. This Court has said:
>
> > 'We have repeatedly held 'that the jurisdiction of the courts of the United States over controversies between citizens of different States, cannot be impaired by the laws of the States, which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power.'
>
> 'Payne *v. Hook*, 74 U.S. 425, 430 (1868).
>
> > "'[I]nasmuch as the jurisdiction of the courts of the United States is derived from the Federal Constitution and statutes, that in so far as controversies between citizens of different States arise which are within the established equity jurisdiction of the Federal courts ...

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[8] *Marshall*, Appellate Brief, 2005 WL 3156909 (U.S.).

> the jurisdiction may be exercised, and is not subject to the limitations or restraint by state legislations establishing courts of probate and giving them jurisdiction over similar matters.'
>
> "*Waterman v. Canal-Louisiana Bank & Trust Co.*, 215 U.S. 33, 43 (1909).[9]
>
> > "'This Court's precedents, thus, hold that because federal jurisdiction is created by federal statute, it cannot be impaired by state law. These precedents are fundamentally inconsistent with the approach of the Ninth Circuit and other federal courts of appeals, which makes the scope of federal jurisdiction entirely dependent on state legislative choices concerning the internal organization of state courts.'"(*Id.*)

Further, (*Id*[10] at 46):

> "*Sutton*[11] and *O'Callighan*[12], thus, expressly permit states to *expand* federal jurisdiction, but not to *shrink* it. Interpreting *Sutton* and *O'Callighan* as the Ninth Circuit and other courts have done – to allow state law to expand or contract federal jurisdiction – is thus simply wrong. It also creates profoundly troubling results.
>
> "Under the Supremacy Clause[13], 'if there is any conflict between federal and state law, federal law shall prevail.'

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[9] "According to *McClellan v. Carland*, 217 U.S. 268, 281 (1910) (constitutional and statutory grants of federal jurisdiction cannot "be impaired by subsequent state legislation creating courts of probate"); *Hayes v. Pratt*, 147 U.S. 557, 570 (1893) (state probate statutes cannot "defeat or impair the general equity jurisdiction of the Circuit Court of the United Sates to administer, as between citizens of different states, the assets of a deceased person within its jurisdiction"), *Lawrence v. Nelson*, 143 U.S. 215, 223-24 (1892) (same); *Clark v. Bever*, 139 U.S. 96, 102 (1891) (states cannot preclude federal jurisdiction by assigning exclusive jurisdiction over probate-related claims to its courts, because "no such result can be constitutionally effected.");' *Borer v. Chapman*, 119 U.S. 587, 600 (1887) (federal jurisdiction "cannot be affected by any legislation except that of the United States"); *Hess v. Reynolds*, 113 U.S. 73, 77 (1885) ("[The] jurisdiction of the courts of the United States...cannot be ousted or annulled by statutes of the States, assuming to confer it exclusively on their own courts."); *Barrow v. Hunton*99 U.S. 80, 85 (1879) (same); *Green's Adm'x v. Creighton*, 64 (23 How.) 90, 107-08 (1859) (same)."

[10] *Marshall*, Appellate Brief, 2005 WL 3156909 (U.S.)

[11] *Sutton v. English*, 246 U.S. 199 (1918)

[12] *O'Callaghan v. O'Brien*, 199 U.S. 89 (1905)

[13] *See* Pet., a-11, p. 25 (fn 45), citing Supremacy Clause here.